

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

RYAN HYSELL and CRYSTAL HYSELL,
on behalf of their daughter, A.H., a minor,

Plaintiffs,

v.

Civil Action No. 5:18-cv-01375

RALEIGH GENERAL HOSPITAL,
and THE UNITED STATES OF AMERICA,

Defendants.

**DEFENDANT UNITED STATES OF AMERICA'S
MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and applicable law, defendant United States of America ("United States") moves the Court to enter summary judgment in its favor against the plaintiffs on the following grounds:

1. This is an action arising under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2671-2680.
2. Under the FTCA, the substantive law of the State of West Virginia applies to this case because the tortious conduct alleged by plaintiffs in the Complaint is alleged to have occurred in West Virginia. 28 U.S.C. § 2672.
3. Under W. Va. Code § 55-7B-3, plaintiffs must prove by a preponderance of evidence that the United States was negligent and that such negligence proximately caused the injuries alleged by the plaintiffs.
4. The plaintiffs are unable to prove that the negligence that they have alleged in this action proximately caused the injuries alleged by the plaintiffs.
5. Since the plaintiffs are unable to prove proximate causation as required by W. Va.

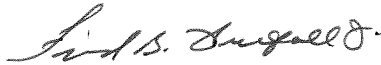
Code § 55-7B-3, the United States is entitled to judgment as a matter of law.

6. The United States also relies on the following exhibits to support this motion:
 - A. Exhibit A which is an excerpt from the deposition testimony of John Fassett.
 - B. Exhibit B which is an excerpt from the deposition testimony of Patricia Connors.
 - C. Exhibit C which is an excerpt from the deposition testimony of Dr. A.M. Iqbal O'Meara.
 - D. Exhibit D which is an excerpt from the deposition testimony of Laura Lampton.
 - E. Exhibit E which is an excerpt from the deposition testimony of Chad Staller.
 - F. Exhibit F which is an excerpt from the deposition testimony of Dr. Jerome Barakos.
 - G. Exhibit G which is an excerpt from the deposition testimony of Dr. Thomas Rugino.
 - H. Exhibit H which is an excerpt from the deposition testimony of Elizabeth Schorry.
 - I. Exhibit I which is an excerpt from the deposition testimony of Dr. Todd Arthur.

Therefore, the United States requests that the Court enter an order granting summary judgment and dismissing this civil action. The United States also requests such other and further relief as this Court deems appropriate under the law.

Respectfully submitted,

MICHAEL B. STUART
United States Attorney



s/Fred B. Westfall, Jr.

Fred B. Westfall, Jr. (WV Bar No. 3992)

Assistant United States Attorney

P.O. Box 1713

Charleston, WV 25326

Phone: 304-345-2200

Fax: 304-347-5443

E-mail: fred.westfall@usdoj.gov

Counsel for Defendant United States of America

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

RYAN HYSELL and CRYSTAL HYSELL,
on behalf of their daughter, A.H., a minor,

Plaintiffs,

v.

Civil Action No. 5:18-cv-01375

RALEIGH GENERAL HOSPITAL,
and THE UNITED STATES OF AMERICA,

Defendants.

CERTIFICATE OF SERVICE

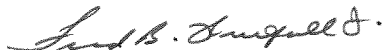
I hereby certify that on February 12, 2020, I electronically filed the foregoing

DEFENDANT UNITED STATES OF AMERICA'S MOTION FOR SUMMARY

JUDGMENT with the Clerk of the Court using the CM/ECF system which will send notification to the following CM/ECF participants:

Christopher T. Nace
Barry J. Nace
Matthew A. Nace
Paulson & Nace, PLLC
1025 Thomas Jefferson Street NW
Suite 810
Washington, D.C. 20007
Counsel for Plaintiffs

D.C. Offutt, Jr.
I. Matthew Mains
David L. Shuman, Jr.
Offutt Nord PLLC
949 Third Avenue, Suite 300
P. O. Box 2868
Huntington, WV 25728-2868
Counsel for defendant Raleigh General Hospital



s/ Fred B. Westfall, Jr.

Fred B. Westfall, Jr. (WV Bar No. 3992)

Assistant United States Attorney

P.O. Box 1713

Charleston, WV 25326

Phone: 304-345-2200

Fax: 304-347-5443

E-mail: fred.westfall@usdoj.gov

Counsel for Defendant United States of America

Exhibit A

JOHN FASSETT, RN, CNM
RYAN HYSELL vs RALEIGH GENERAL HOSPITAL

January 06, 2020

1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
3 AT BECKLEY
4
5

6 RYAN HYSELL and CRYSTAL
7 HYSELL, on behalf of their
8 daughter, A.H., a minor,

9 Plaintiffs, No. 5:18-cv-01375

10 vs.

11 RALEIGH GENERAL HOSPITAL, et
12 al,

13 Defendants.
~~~~~

14  
15 DEPOSITION OF  
16 JOHN FASSETT, RN, CNM  
17

18 January 6, 2020

19 10:00 a.m.

20  
21 44 Montgomery Street, Ste. 1100

22 San Francisco, California  
23

24 Joan Theresa Cesano, CSR No. 2590  
25

JOHN FASSETT, RN, CNM  
RYAN HYSSELL vs RALEIGH GENERAL HOSPITAL

January 06, 2020  
12

|    |                                                          |         |
|----|----------------------------------------------------------|---------|
| 1  | this, mark this as Deposition Exhibit Number 3 for the   | 10:08AM |
| 2  | moment. Are these notes?                                 | 10:08AM |
| 3  | (Exhibit 3 marked)                                       | 10:08AM |
| 4  | MR. NACE: Counsel, what was 2?                           | 10:08AM |
| 5  | MR. WESTFALL: 2 is going to be the strip.                | 10:08AM |
| 6  | MR. NACE: Okay.                                          | 10:08AM |
| 7  | BY MR. WESTFALL:                                         | 10:08AM |
| 8  | Q The notes that you handed us, I'll show that as        | 10:08AM |
| 9  | Exhibit Number 3. Is that a copy of the notes that you   | 10:08AM |
| 10 | gave to us prior to the deposition?                      | 10:08AM |
| 11 | A They are.                                              | 10:09AM |
| 12 | Q And those notes, looks like, refer to kind of          | 10:09AM |
| 13 | your running thoughts on the depositions and also on the | 10:09AM |
| 14 | electronic fetal monitoring strip; is that correct?      | 10:09AM |
| 15 | A Correct.                                               | 10:09AM |
| 16 | Q Anything else in those notes covers anything else      | 10:09AM |
| 17 | other than that?                                         | 10:09AM |
| 18 | A No.                                                    | 10:09AM |
| 19 | Q Have you relied on any factual information not         | 10:09AM |
| 20 | contained in anything that you've reviewed?              | 10:09AM |
| 21 | A No.                                                    | 10:09AM |
| 22 | Q Are you intending to give any opinions on              | 10:09AM |
| 23 | causation in this case?                                  | 10:09AM |
| 24 | A I am not.                                              | 10:09AM |
| 25 | Q Now, you mentioned that you had an electronic          | 10:09AM |



# Exhibit B

Ryan Hysell et al. vs Raleigh General Hospital et al.  
CONNORS, PATRICIA on 01/13/2020

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

|                            |   |               |
|----------------------------|---|---------------|
| RYAN HYSELL and CRYSTAL    | ) |               |
| HYSELL, on behalf of their | ) |               |
| daughter, A.H., a minor,   | ) |               |
|                            | ) |               |
| Plaintiffs,                | ) |               |
|                            | ) | Case No.      |
| v.                         | ) | 5:18-cv-01375 |
|                            | ) |               |
| RALEIGH GENERAL HOSPITAL,  | ) |               |
| COMMUNITY HEALTH SYSTEMS,  | ) |               |
| INC., D/B/A ACCESS HEALTH, | ) |               |
| DEBRA CROWDER, CNM, and    | ) |               |
| THE UNITED STATES OF       | ) |               |
| AMERICA,                   | ) |               |
|                            | ) |               |
| Defendants.                | ) |               |

VIDEOTAPED AND TELECONFERENCED DEPOSITION OF:

PATRICIA CONNORS

Taken before Andrea B. Davison, RPR,  
Notary Public in and for the State of Maine,  
pursuant to notice dated December 16, 2019, at  
the offices of Gaige & Feliccitti, LLC, 205  
Woodford Street, Portland, Maine, on January  
13, 2020, commencing at 10:00 a.m.

Andrea B. Davison, RPR  
GAIGE & FELICCITTI, LLC  
205 Woodford Street - Portland, ME 04103  
scheduling@gandfreporing.com ~ (207) 854-5296  
www.gandfreporing.com

Ryan Hysell et al. vs Raleigh General Hospital et al.  
CONNORS, PATRICIA on 01/13/2020

Page 27

1 A. No.

2 Q. Okay. All right. Fair enough. All right.

3 We had -- we had just marked your expert  
4 statement as Exhibit 2. And you had told me  
5 that in addition to the original material you  
6 reviewed in this case, you had reviewed the  
7 deposition of Ms. Hysell's mother, the  
8 grandmother of the child, and also the  
9 deposition testimony that was taken last week  
10 in California of John Fassett, who's the  
11 nursing-midwife expert, correct?

12 A. Correct.

13 Q. And that -- that neither of those depositions  
14 had changed your opinions in this case,  
15 correct?

16 A. That's right.

17 Q. All right. Let's go over your deposition  
18 statement or your expert statement then as  
19 shown in Exhibit 2.

20 You start off with a brief summary, and  
21 you have some observations about what happened  
22 after birth, after the delivery, to the child.  
23 Let me ask you if you intend to offer any  
24 opinions regarding causation or damages in  
25 this case.

Ryan Hysell et al. vs Raleigh General Hospital et al.  
CONNORS, PATRICIA on 01/13/2020

Page 28

1 A. No, I don't.

2 Q. All right. You make a comment about the Apgar  
3 scores of 7 and 8, and you say it in your  
4 report. It is, "It appears that with regard  
5 to those Apgar scores the ones that were,  
6 quote, 1 and not a 2 were: respiratory  
7 effect, muscle tone, and color."

8 By making that statement, are you any --  
9 in any way critical of the Apgar scoring  
10 itself?

11 A. Yes, I -- yes, I am.

12 Q. In -- in what regard?

13 A. Well, the baby was not completely pink, so you  
14 should not have gotten a tube. They had to  
15 give the baby some blow by. And there was  
16 also some muscle tone. The baby was also  
17 taken to the nursery for four hours, and mom  
18 did not see the baby for four hours. That's  
19 what my concerns were.

20 Q. All right. So your comment there, just so I  
21 understand, you're saying that those were  
22 marked 2 and you believe they should have been  
23 1's?

24 A. Yes.

25 Q. Okay. So what would your Apgar scoring at one

# Exhibit C

AM IQBAL O'MEARA, M.D.  
HYSELL vs RALEIGH GENERAL HOSPITAL

January 28, 2020

1

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
3 AT BECKLEY

4 RYAN HYSELL and :  
5 CRYSTAL HYSELL, :  
6 Plaintiffs, :  
7 v. : Civil Action No:  
8 RALEIGH GENERAL : 5:18-cv-01375  
9 HOSPITAL, et al., :  
Defendants. :

10  
11  
12 DEPOSITION OF AM IQBAL O'MEARA, M.D.

13  
14 Tuesday, January 28, 2020

15 1:09 p.m.

16  
17 Paulson & Nace  
18 1025 Thomas Jefferson Street, N.W.  
19 Suite 810  
20 Washington, D.C

21 Terry L. Bradley, Court Reporter  
22

AM IQBAL O'MEARA, M.D.  
HYSELL vs RALEIGH GENERAL HOSPITAL

January 28, 2020  
50

1 that that primary responsibility is not nurse  
2 midwife Crowder's responsibility. So given  
3 that, then no.

4 Q. Do you have any training as a  
5 certified nurse midwife?

6 A. No.

7 Q. Are you familiar with the standards  
8 of care that apply to certified nurse midwives  
9 at the time of the events involved in this  
10 case?

11 A. No.

12 Q. Have you ever supervised a certified  
13 nurse midwife?

14 A. No.

15 Q. And in fact, in your current  
16 practice you don't deal with certified nurse  
17 midwives, do you?

18 A. That's correct.

19 Q. All right. Let's take a look at the  
20 No. 1 opinion that you have in this case.

21 Oh. Let me go back.

22 Are you intending to give causation

AM IQBAL O'MEARA, M.D.  
HYSELL vs RALEIGH GENERAL HOSPITAL

January 28, 2020  
51

1 opinions in this case?

2 A. No.

3 Q. So let's take a look at opinion No.  
4 1: Failure to identify a nonreassuring fetal  
5 heart tracing and intervene accordingly.

6 I take it you were given copies of  
7 the electronic fetal monitor strip to review in  
8 this case?

9 A. That's correct.

10 Q. Let me show you what's been marked  
11 as Exhibit No. 4. This is a copy of the fetal  
12 heart tracings that I received from plaintiffs'  
13 counsel.

14 (Exhibit 4 marked for  
15 identification.)

16 I'd like for you to take a look at  
17 those and compare that with what you received  
18 to see if they're one and the same.

19 A. If they're one and the same?

20 Q. Yes.

21 A. Okay.

22 Q. You can probably tell by the page



# Exhibit D

Laura Lampton  
January 16, 2020

1

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

3 CASE NO. 5:18-CV-01375

4 HON. JUDGE IRENE BERGER

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6  
7 RYAN HYSELL AND CRYSTAL HYSELL,  
8 ON BEHALF OF THEIR DAUGHTER, A.H.,

9 A MINOR,

10 PLAINTIFFS

11  
12 V.

13  
14 RALEIGH GENERAL HOSPITAL,  
15 COMMUNITY HEALTH SYSTEMS, INC.,

16 D/B/A ACCESS HEALTH, DEBRA

17 CROWDER, CNM, AND

18 THE UNITED STATES OF AMERICA,

19 DEFENDANTS

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22  
23 DEPONENT: LAURA LAMPTON

24 DATE: JANUARY 16, 2020

25 REPORTER: LACEE TOWNSEND

Laura Lampton  
January 16, 2020

18

1 reviewed?

2 A No.

3 Q You would agree with me that you're not a  
4 physician?

5 A Correct.

6 Q You're not able to make medical diagnoses?

7 A Correct.

8 Q You're not able to prescribe medicine?

9 A Correct.

10 Q You're not able to order treatment?

11 A Correct.

12 Q In terms of opinions with respect to the issue  
13 of life expectancy, you previously testified that you  
14 would defer to a physician?

15 A Correct.

16 Q Is that still the case?

17 A Yes.

18 Q You do not plan to offer any opinions about  
19 this -- applicable standard of care for a hospital or  
20 nurses?

21 A Correct.

22 Q You're not rendering opinions as to the cause  
23 of A.H.'s alleged injuries in this case?

24 A Correct.

25 Q Explain to me your general methodology in

# Exhibit E



Chad Staller, JD, MBA, MAC, CVA  
January 21, 2020

25

1 A. Agreed.

2 Q. You're not qualified to make a  
3 medical diagnosis?

4 A. Agreed.

5 Q. Not able to prescribe medicine?

6 A. True.

7 Q. Order treatment?

8 A. Yes.

9 Q. In this case and we will get into  
10 this more specifically, is it fair to say you  
11 deferred to either Dr. Rugino and/or Nurse  
12 Lampton with respect to Aubrie Hysell's life  
13 expectancy?

14 A. Yes.

15 Q. You made no independent conclusions  
16 about Aubrie Hysell's life expectancy; correct?

17 A. True.

18 Q. You would agree that you're not  
19 qualified to give opinions on the applicable  
20 standard of care for a hospital or a nurse?

21 A. Sure.

22 Q. As you sit here today, you do not  
23 tend to render opinions as to the cause of  
24 Aubrie Hysell's alleged injuries in this case?

25 A. Nothing with regard to cause.

# Exhibit F

JEROME A. BARAKOS, M.D.  
HYSELL vs RALEIGH GENERAL HOSPITAL

January 30, 2020

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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BECKLEY

RYAN HYSELL and CRYSTAL  
HYSELL, on behalf of their  
daughter, A.H., a minor,

Plaintiffs,

vs.

Case No. 5:18-cv-01375

RALEIGH GENERAL HOSPITAL,  
et al.

Defendants.

DEPOSITION OF JEROME A. BARAKOS, M.D.

Thursday, January 30, 2020

San Francisco, California

Pages 1 to 36

REPORTED BY:

Richard M. Raker

CSR No. 3445



JEROME A. BARAKOS, M.D.  
HYSELL vs RALEIGH GENERAL HOSPITAL

January 30, 2020  
18

1 insult. The location, distribution, morphology and  
2 signal is consistent with that, most specifically a  
3 hypoperfusalional and hypoxic event, and are not in  
4 keeping with a genetic basis.

5 Q. Now, you mentioned that your findings are  
6 from a remote injurious insult; is that correct?

7 A. Yes, sir.

8 Q. Are you able to time the insult to any  
9 degree other than the fact it's a remote injurious  
10 insult?

11 A. No, sir. Typically we're in a position to  
12 state that this is an abnormal finding that would be  
13 associated with hypoperfusion hypoxia, and then turn  
14 it over to the clinical experts or the clinicians  
15 caring for the child to ascertain what potential  
16 sentinel event would be associated with this process.

17 Q. And in this particular case, are you going  
18 to come to trial and give an opinion any more  
19 definitive about the timing of the insult other than  
20 what you've just mentioned?

21 A. No, sir.

22 Q. All right. Now, in terms of your other  
23 opinions in this case that we haven't discussed, can  
24 you tell me what they are, please?

25 A. I think I pretty much covered it. There's

JEROME A. BARAKOS, M.D.  
HYSELL vs RALEIGH GENERAL HOSPITAL

January 30, 2020  
22

1 confined essentially to the white matter of the  
2 brain?

3 A. Yes, sir.

4 Q. You mentioned that you did review a report  
5 from Dr. Gordon Sze; is that correct?

6 A. Yes, sir.

7 Q. Do you have any disagreements with his  
8 report?

9 A. I would say that I agree with Dr. Sze that  
10 these findings are in keeping with periventricular  
11 leukomalacia. I would disagree with Dr. Sze in his  
12 statement that -- so the way he phrases it, so I  
13 disagree with the statement that these findings of  
14 periventricular leukomalacia or gliosis can be  
15 consistent with a genetic cause.

16 Q. Any other disagreements with his report  
17 other than that?

18 A. No, sir.

19 Q. Doctor, my understanding is that you were a  
20 contributor to the textbook "Fundamentals of  
21 Diagnostic Radiology"; is that correct?

22 A. Yes.

23 Q. And in the latest edition, did you author  
24 the chapter on "Pediatric Neuroimaging"?

25 A. If it's edition -- the latest edition,

JEROME A. BARAKOS, M.D.  
HYSELL vs RALEIGH GENERAL HOSPITAL

January 30, 2020  
30

1 matter from inheritable, genetic and metabolic  
2 conditions do damage white matter, do give signal  
3 abnormality, do cause tissue dropout, but it's simply  
4 not in this pattern.

5           So that's why I would state, for example, if  
6 the case goes to court and someone on the other side  
7 is saying, "Jerry, I believe this could be genetic,"  
8 well, then, I would be in a position to pull all the  
9 literature I could find on the vast array of  
10 dysmyelinating and demyelinating conditions to show  
11 that no such genetic condition exists that gives you  
12 this morphologic pattern of PVL. But at the end of  
13 the day I wouldn't disagree with the fact that, yeah,  
14 this could be PVL, which I'm stating it is, but there  
15 may be a genetic process as well, but that genetic  
16 process would not and could not be accounting for the  
17 white matter changes that we've described on the  
18 imaging study.

19           Q. Doctor, you were asked about how many  
20 depositions in terms of percentages in which you  
21 testified. I guess -- let me go back a step further.  
22 How many cases do you review per year?

23           A. On the neighborhood of about six or eight a  
24 year.

25           Q. And I would assume that review follows the

# Exhibit G

THOMAS ANDREW RUGINO, M.D.  
HYSELL vs RALEIGH GENERAL HOSPITAL

February 01, 2020

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THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

AT BECKLEY

RYAN HYSELL and CRYSTAL HYSELL,

ON BEHALF OF THEIR DAUGHTER, A.H.,

A MINOR

Plaintiffs,

-v- Civil Action No:

RALEIGH GENERAL HOSPITAL, ET AL. 5:18-cv-01375

Defendants.

Deposition of Thomas Andrew Rugino, M.D.

Washington, DC

Saturday, February 1, 2020

9:40 a.m.

Job No: J4786812

Pages: 1-132

Reported by: Kenneth Norris

THOMAS ANDREW RUGINO, M.D.  
HYSELL vs RALEIGH GENERAL HOSPITAL

February 01, 2020  
37

1 from the calvarium and mild enlargement of the  
2 ventricle.

3 Q. All right.

4 Let's talk about the March -- well, first of  
5 all, is that pretty much the sum total of your  
6 understanding of what was shown on the April 2012 MRI  
7 scan?

8 A. I think that's a good summary.

9 Q. Let's talk about the March 2016 MRI scan.  
10 What's your understanding of what that scan showed?

11 A. It showed pretty much the same thing, signal  
12 changes in the periventricular region and volume loss.

13 Q. Is it your understanding that these scans  
14 show that periventricular leukomalacia or PVL?

15 A. Yes. That's a -- that's a reasonable  
16 interpretation.

17 Q. Now, let's take a look at the next section.  
18 After the neurological you have got  
19 neurodevelopmental.

20 This particular information, where did it  
21 come from?

THOMAS ANDREW RUGINO, M.D.  
HYSELL vs RALEIGH GENERAL HOSPITAL

February 01, 2020  
69

1 manifestation of muscle dyscontrol along with the  
2 dysphagia. Those are aspects of muscle dyscontrol  
3 that you just don't see with autism spectrum disorder.

4 Even the tremors. They're not  
5 characteristic at all of individuals with autism  
6 spectrum disorder.

7 Q. Now, in terms of the hypoxic injury that you  
8 believe occurred in this case, are you intending to  
9 come to trial and express an opinion as to when it  
10 occurred?

11 A. No.

12 Q. So, as we sit here today, you're not going  
13 to come to trial and testify to a reasonable degree of  
14 medical probability as to when the hypoxic injury  
15 occurred; is that correct?

16 A. No.

17 Q. That's not correct or that's correct?

18 A. Oh, I'm sorry.

19 Q. I mean --

20 A. I have no intention of testifying at trial  
21 as to the timing of the injury.

# Exhibit H



Page 1

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

3                           \*   \*   \*

4   RYAN HYSELL and CRYSTAL HYSELL,  
5   on behalf of their daughter, A.H.,  
6   a minor,  
7               Plaintiffs,

8               vs.                           CASE NO. 5:18-cv-01375

9   RALEIGH GENERAL HOSPITAL,  
10   COMMUNITY HEALTH SYSTEMS, INC.,  
11   D/B/A/ ACCESS HEALTH, DEBRA  
12   CROWDER, CNM, and THE UNITED  
13   STATES OF AMERICA,  
14               Defendants.

15                           \*   \*   \*

16           Deposition of ELIZABETH SCHORRY, M.D.,  
17   Witness herein, called by the Defendants for  
18   cross-examination pursuant to the Rules of Civil  
19   Procedure, taken before me, April L. Crites, RPR,  
20   RMR, CRR, a Notary Public in and for the State of  
21   Ohio, at the offices of Cincinnati Children's  
22   Hospital Medical Center, 3333 Burnet Avenue,  
23   Conference Room E5.249, Cincinnati, Ohio, 45229,  
24   on Monday, November 25, 2019, at 9:51 a.m.

25                           \*   \*   \*

1 amount of time that we can say just based on  
2 the symptoms.

3 Q. Okay. Based on the MRI findings  
4 of white matter injury around the ventricles,  
5 where -- and just in terms of the MRI, what  
6 would that indicate in terms of the timing of  
7 that injury?

8 MR. NACE: Asking for an expert  
9 opinion, which I don't think is her expertise.

10 THE WITNESS: That's correct. That  
11 is not my area of expertise.

12 BY MR. OFFUTT:

13 Q. Okay. All right.

14 So did the findings of the white  
15 material injury around the ventricles play any  
16 part in your diagnosis or assessment of Aubrie?

17 A. It did play some part in the  
18 assessment.

19 Q. Okay.

20 A. I mean, I've seen these sorts of  
21 changes often. I see them often in children  
22 who are premature, which she was not.

23 Q. Is this condition also called  
24 periventricular leukomalacia?

25 A. It can be called that, yes.

Page 69

1 MR. NACE: Yes, I'm still here.

2 MS. KNERR: Okay. So we know it's on  
3 Barry's end. Maybe he just needs to try --

4 THE WITNESS: There it says your  
5 speaker is muted. Un-mute?

6 MR. NACE: Are you there?

7 THE WITNESS: Are you back?

8 MR. NACE: Yeah.

9 THE WITNESS: We lost you.

10 MR. NACE: I know, I'm sure you  
11 missed us. Matt did it.

12 THE WITNESS: Okay, good.

13 BY MR. NACE:

14 Q. The question I was asking, ma'am,  
15 you weren't aware of what the sats were at the  
16 time of delivery and in the nursery, were you?

17 A. No.

18 Q. You were told that there was some  
19 suctioning that took place, but you have no  
20 idea what was suctioned or how much, right?

21 A. Right. Only what the parents told  
22 us was all the information we had at that time.

23 Q. As a geneticist, do you get into  
24 things such as hypoxia causing brain damage?  
25 Or is that something outside of your area?

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1           A.     That is generally outside of my  
2     area. My area is, are there genetic causes for  
3     the brain injury?

4           Q.     If there were -- if it was known  
5     that there were causes that showed -- that bad  
6     sats that showed suctioning of meconium --

7           A.     Oh, was there meconium? I never  
8     heard anything about meconium.

9           Q.     You haven't heard my question yet.

10          A.     Okay.

11          Q.     That would affect your opinions on  
12     whether this is genetic history or not, right?

13                 MR. WESTFALL: This is Fred Westfall.  
14     I'll place an objection on the record. The  
15     question assumes facts that definitely are not in  
16     evidence.

17                 MR. NACE: Okay.

18                 MR. OFFUTT: Join in the objection.

19     BY MR. NACE:

20           Q.     Ma'am, you weren't given  
21     information that might indicate a cause of  
22     something other than genetics; is that correct?

23           A.     I was not given information at  
24     that first visit? No, I didn't -- I didn't  
25     really have any --

# Exhibit I

Page 1

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

3                                   \*   \*   \*

4       RYAN HYSELL and CRYSTAL HYSELL,  
5       on behalf of their daughter, A.H.,  
6       a minor,

7                   Plaintiffs,

8                   vs.                                   CASE NO. 5:18-cv-01375

9       RALEIGH GENERAL HOSPITAL,  
10      COMMUNITY HEALTH SYSTEMS, INC.,  
11      D/B/A/ ACCESS HEALTH, DEBRA  
12      CROWDER, CNM, and THE UNITED  
13      STATES OF AMERICA,

14                   Defendants.

15                                   \*   \*   \*

16                   Deposition of TODD M. ARTHUR, M.D.,  
17       Witness herein, called by the Defendants for  
18       cross-examination pursuant to the Rules of Civil  
19       Procedure, taken before me, April L. Crites, RPR,  
20       RMR, CRR, a Notary Public in and for the State of  
21       Ohio, at the offices of Cincinnati Children's  
22       Hospital Medical Center, 3333 Burnet Avenue,  
23       Conference Room E5.249, Cincinnati, Ohio, on  
24       Monday, November 25, 2019, at 12:32 p.m.

25                                   \*   \*   \*

1 global delays or any type of physical  
2 manifestation of an injury, neurologic or  
3 otherwise, have these same MRI findings as  
4 Aubrie?

5 A. Specific to her imaging, yes, they  
6 could -- they could have normal development,  
7 not have global developmental delay.

8 Q. Okay.

9 A. If I answered your question; I  
10 think I did.

11 Q. Right.

12 If the -- if her brain had been  
13 injured at the time of birth would -- by  
14 hypoxia or whatever, would you expect it to  
15 have been microcephalic at birth?

16 MS. KNERR: I think we're getting a  
17 little close to getting some expert testimony, but  
18 go ahead.

19 THE WITNESS: All right.

20 MS. KNERR: Go ahead.

21 THE WITNESS: Would I expect her to  
22 be microcephalic at birth? No.

23 BY MR. OFFUTT:

24 Q. All right. Were you able to make  
25 a determination as to the cause of Aubrie's

1 conditions? Her global delay and other issues  
2 she was having?

3 A. No.

4 Q. I note in the records that at one  
5 point you say that she has a condition known as  
6 cerebral palsy.

7 A. Correct.

8 Q. And is it true that that is more a  
9 description of a constellation of symptoms than  
10 a diagnosis?

11 A. Correct.

12 Q. And the fact that it's labeled as  
13 cerebral palsy doesn't tell you anything about  
14 the cause of the condition, does it?

15 A. Correct.

16 MR. OFFUTT: Okay. Thank you,  
17 Doctor. That's all I have.

18 THE WITNESS: Okay.

19 MR. OFFUTT: All right, Fred.

20 MR. WESTFALL: For some reason, I  
21 got -- I got dropped off for part of this. But I  
22 don't have any questions. Thank you very much.

23 MR. OFFUTT: You're trusting that I  
24 asked all the right questions?

25 MR. WESTFALL: Hey, I have to. For